

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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STEPHANIE GORDON.

Plaintiff,

Case No. 2:18-cv-00775-APG-GWF

V.

NANCY A. BERRYHILL, Acting  
Commissioner Social Security,

**Defendant.**

## REPORT AND RECOMMENDATION

## Application To Proceed In Forma Pauperis

(#1) And Complaint For Review Of A Social Security Disability Or Supplemental Security Income Decision (#1-1)

This matter is before the Court on Plaintiff's Application to Proceed *In Forma Pauperis* (ECF No. 1), and Complaint for Review of a Social Security Disability or Supplemental Security Income Decision (ECF No. 1-1), filed on April 27, 2018.

## **BACKGROUND**

On March 16, 2018, the Plaintiff filed her initial Application to Proceed *in Forma Pauperis* (ECF No. 1) and Complaint for Review of a Social Security Disability or Supplemental Security Income Decision (ECF No. 1-1) in Case No. 2:18-cv-00492-JCM-GWF. The Court granted Plaintiff's request to proceed *in Forma Pauperis* but dismissed Plaintiff's Complaint without prejudice, instructing the Plaintiff to file an amended complaint by April 11, 2018 in accordance with the deficiencies noted therein. ECF No. 3 at 3. On April 27, 2018, Plaintiff filed a second Application to Proceed *In Forma Pauperis* (ECF No. 1) and Complaint for Review of a Social Security Disability or Supplemental Security Income Decision (ECF No. 1-1), in Case No. 2:18-cv-00775-APG-GWF against the same party, and alleging the same conduct

which gave rise to the initial complaint filed in Case No. 2:18-cv-00492-JCM-GWF. Plaintiff is advised that she cannot have two cases simultaneously open that refer to the same events and same party. Therefore, the latter Case No. 2:18-cv-00775-APG-GWF will be closed.

## **DISCUSSION**

Plaintiff's complaint filed in Case No. 2:18-cv-00775-APG-GWF, suffers from the same deficiencies as the first complaint, filed in Case No. 2:18-cv-00492-JCM-GWF. Plaintiff has failed to prove that she has exhausted all administrative remedies available to her prior to filing a complaint with district court, pursuant to 42 U.S.C. § 405(g). Generally, a plaintiff who seeks judicial review has received an: (1) unfavorable decision from an Administrative Law Judge (“ALJ”); (2) has requested a “reconsideration” of the denial; and (3) then appealed the ALJ’s decision to the Appeals Counsel, who must then deny Plaintiff’s request for an appeal. It is only at that point in which the ALJ’s decision becomes a final agency decision that is ripe for judicial review pursuant to 42 U.S.C. § 405(g).

Plaintiff's instant complaint filed in Case No. 2:18-cv-00775-APG-GWF (ECF No. 1-1) and Exhibits<sup>1</sup> (ECF No. 3) indicate Plaintiff has indeed received an unfavorable ruling from the ALJ, and subsequently requested a "reconsideration" of the denial. However, Plaintiff's complaint falls short of alleging an appeal has been filed with the Appeals Counsel. Because the administrative remedies required under the Act have not yet been exhausted, the Court will dismiss this complaint, with leave to amend, to provide Plaintiff another opportunity to give the Court the necessary information. Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis* (ECF No. 1), filed on April 27, 2018 is **denied** as moot.

**IT IS FURTHER ORDERED** that Plaintiff's Amended Complaint for Review of a Social Security Disability or Supplemental Security Income Decision (ECF No. 1-1) is dismissed, without prejudice with leave to amend. If Plaintiff elects to file an Amended Complaint she is instructed to do so by **June 4, 2018**.

<sup>1</sup> The Court has reviewed Plaintiff's Exhibits regarding the "Complaint of Judicial Misconduct or Disability" filed on April 30, 2018, (ECF. No. 3) and finds the exhibits are unrelated to her complaint for judicial review. Accordingly, these exhibits were not taken into consideration in this Order.

## **RECOMMENDATION**

**IT IS RECOMMENDED** that the Clerk of the Court be instructed to close Case No. 2:18-cv-00775-APG-GWF and transfer all filings therein to Case No. 2:18-cv-00492-JCM-GWF.

**IT IS FURTHER RECOMMENDED** that Plaintiff be instructed to make all future filings, related to her request for judicial review, under Case No. 2:18-cv-00492-JCM-GWF.

Dated this 4th day of May, 2018.

George Foley Jr.

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**GEORGE FOLEY, JR.**  
**UNITED STATES MAGISTRATE JUDGE**

## NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).